

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

EUGENE P. KUSCH, ET AL.

Plaintiffs,

-vs-

Case No. 96-C-02215

ACandS, INC., ET AL.

Defendants.

Examination of ELMER H. BORCHARDT, taken
at the instance of the Plaintiffs, under and pursuant to
Section 804.05 of the Wisconsin Statutes, pursuant to
Notice, before SHERYL L. STAWSKI, a Registered
Professional Reporter and Notary Public in and for the
State of Wisconsin, at Cascino Vaughan Law Offices,
Ltd., 633 West Wisconsin Avenue, Milwaukee, Wisconsin,
on the 16th day of July, 1996, commencing at 9:10 a.m.
and concluding at 12:20 p.m.

A P P E A R A N C E S

CASCINO VAUGHAN LAW OFFICES, LTD., by
MR. ROBERT G. McCOY,
403 West North Avenue,
Chicago, Illinois 60610,
appeared on behalf of the Plaintiffs.

HENSON & EFRON, by
MR. SCOTT A. NEILSON,
1200 Title Insurance Building,
400 Second Avenue South,
Minneapolis, Minnesota 55401,
appeared on behalf of the Defendant ACandS, Inc.

TERSCHAN, STEINLE & NESS, by
MR. FRANK R. TERSCHAN,
2600 North Mayfair Road, Suite 700,
Milwaukee, Wisconsin 53226,
appeared on behalf of the Defendant L & S Insulation
Company, Inc.

COOK & FRANKE, S.C., by
MS. LAURA E. SCHUETT,
660 East Mason Street,
Milwaukee, Wisconsin 53202-3877,
appeared on behalf of the Defendant Building Services
Industrial Sales, Inc.

HINSHAW & CULBERTSON, by
MS. SHEILA M. GAVIN,
100 East Wisconsin Avenue,
Milwaukee, Wisconsin 53202,
appeared on behalf of the Defendant Rutland Fire Clay.

O'NEIL, CANNON & HOLLMAN, S.C., by
MR. THOMAS G. CANNON,
111 East Wisconsin Avenue,
Milwaukee, Wisconsin 53202,
appeared on behalf of the Defendant WR Grace & Company.

NELSON, DRIES & ZIMMERMAN, S.C., by
MR. KURT R. ANDERSON,
150 North Sunnyslope Road, Suite 305,
Brookfield, Wisconsin 53005,
appeared on behalf of the Defendant Grant-Wilson
Company.

A P P E A R A N C E S C O N T I N U E D

OTJEN, VAN ERT, STANGLE, LIEB & WEIR, S.C., by
 MR. JEFFREY J.P. CONTA,
 700 North Water Street, Suite 800,
 Milwaukee, Wisconsin 53202-4206,
 appeared on behalf of the Defendant Allied Signal, Inc.

LAW OFFICE OF WILLIAM M. KOZIOL, by
 MS. EILEEN M. MALONEY,
 1 Kemper Drive,
 Long Grove, Illinois 60049-0001,
 appeared on behalf of the Defendant John Crane, Inc.

A L S O P R E S E N T

Mr. Sean P. Kern.

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TRANSCRIPT OF PROCEEDINGS

ELMER H. BORCHARDT, called as a witness
herein, having been first duly sworn on oath, was
examined and testified as follows:

EXAMINATION

BY MR. MCCOY:

Q Could you give us your name for the record?

A Elmer H. Borchardt.

Q Could you spell that last name for us, Elmer?

A B-O-R-C-H-A-R-D-T.

Q Mr. Borchardt, my name is Bob McCoy. I'm an
attorney representing Mr. Kusch and Mr. Fischer --
Eugene Kusch and Mark Fischer who are the
plaintiffs in this case. Do you know either of
these gentlemen?

A I know who Mr. Kusch is, Gene Kusch.

Q How do you know Gene Kusch?

A I met him occasionally at annual conferences up in
Door County.

Q If at any point in time any of my questions are
unclear, would you be sure to let me know or let
your attorney know; and I would be happy to
straighten out those questions so you understand
those? You're represented by an attorney today; is
that correct?

1 A That's right.

2 Q And you're appearing here on behalf of L & S
3 Insulation; is that right?

4 A Yes.

5 Q Is that a company or a corporation?

6 A Company incorporated.

7 Q So it's an incorporated company?

8 A Yes.

9 Q What is your position with that company today?

10 A I'm the president.

11 Q How long have you been the president of L & S
12 Insulation?

13 A Mid '70s.

14 Q You also own part of the company?

15 A Yes.

16 Q Are you the only owner of the company?

17 A No.

18 Q How many owners does the company have?

19 A Five children, a wife and an associate.

20 Q Five children. These are your children?

21 A Stockholders, yes.

22 Q And your wife?

23 A My wife.

24 Q And one person who's not a relative?

25 A Yes.

1 Q And how much business do you, your children and
2 wife own?

3 A Ten percent.

4 Q How much does the owner who's not a relative own?

5 A One percent.

6 Q I'm a little bit confused. ~~Who~~ owns the -- I think
7 you said that you and your family own ten percent?

8 A No, no, I'm sorry. No, I said the family owns ten
9 percent.

10 Q The family owns ten percent. Approximately how
11 much do you own?

12 A The balance.

13 Q So you own about 89 percent?

14 A Yes.

15 Q And when was the business begun?

16 A In the '30s.

17 Q And who started the business?

18 A Mr. LaVeirre owned the business.

19 Q Would you spell his name for me?

20 A Cap L-A, cap V-E-I-R-R-E.

21 Q So Mr. LaVeirre, he was the founder?

22 A Yes.

23 Q And then could you tell me what was the succession
24 as far as the person who was the owner, to the best
25 of your knowledge?

1 A He came in in **1957** and gave the business to five
2 people that were working there.

3 Q You say "**He** came in in **1957**," what do you mean
4 "came in"?

5 A He walked in one day and said, I want you people to
6 have this business; you've worked for me and I'm
7 giving it to you over a time frame that you decide
8 and the payments that you decide.

9 Q Were you one of the five people?

10 A I was the youngest.

11 Q What happened after Mr. LaVeirre offered to sell
12 the business?

13 A There were a succession of **50** percent stockholders
14 until such a time that I bought the remaining stock
15 from the 50 percenter.

16 Q How much of the stock did you originally acquire or
17 purchase?

18 A Eight percent.

19 Q And when did this occur that you first became an
20 eight percent owner?

21 A **1957**.

22 Q I'm sorry, I missed --

23 A **1957**.

24 Q **So** between **1957** and some later date, you acquired
25 all the shares of L & S Insulation; is that right?

1 A That's correct.

2 Q And what was the date when you became a 100 percent
3 owner of L & S Insulation, to the best of your
4 recollection?

5 A I don't know the exact date, but it would be in the
6 '70s.

7 Q When did you first start working for L & S
8 Insulation?

9 A 1950.

10 Q What was your first position with L & S Insulation?

11 A I was an estimator. I was an estimator in the
12 roofing division.

13 Q And what subsequent changes in your position
14 occurred at L & S Insulation? I'm talking about
15 your employment position now.

16 A Yes, I moved to the insulation division in the late
17 '50s as a field take-off man and field rep.

18 Q And what changes occurred after that?

19 A That stayed the same.

20 Q You stayed with the insulation division?

21 A Yes.

22 Q That's still where you spend your time today?

23 A Yes.

24 Q Back in 19 -- I will have to apologize, I have got
25 to take a quick break. I will be right back, I

1 believe, in five minutes.

2 (Recess taken,)

3 BY MR. McCOY:

4 Q Mr. Borchardt, what are your responsibilities today
5 with the insulation division?

6 A I primarily estimate, do take-off work. I don't do
7 any more field work.

8 Q What is take-off work?

9 A Taking quantities off of blueprints, converting
10 them into dollars.

11 Q Now, back in the late 1950s, you said you were a
12 field rep in the insulation division; is that
13 right?

14 A I went to the jobs.

15 Q What was your responsibility back in the late 1950s
16 as a field rep?

17 A Checking the jobs to see if they were ready,
18 measuring jobs, measuring quantities if it required
19 take-off work.

20 Q What types of insulation was the company using back
21 in the late 1950s?

22 A Primarily fiberglass, small portion of calsil.

23 Q What other types of insulation?

24 A Perhaps some Rockwell mineral wool.

25 Q What other types of insulation?

1 A You're asking about companies or types?

2 Q Types.

3 A There were some aircell products and woolfelt
4 products.

5 Q Woolfelt?

6 A Woolfelt one word.

7 Q Can you spell that?

8 A W-O-O-L-F-E-L-T.

9 Q Were there any pipe coverings back in the late
10 1950s?

11 A Those are all the pipe -- Most of those are pipe
12 covering; the woolfelt, the aircell, the
13 fiberglass, the calsil.

14 Q What about any of the powdered cement? Did you
15 have a line of those?

16 A We purchased insulating cement for fittings.

17 Q What about gasket materials? Did you have a line
18 of those?

19 A None.

20 Q How about blankets? Did you have a line of
21 blankets?

22 MR. TERSCHAN: When you say "did you have
23 a line of," are you asking whether they
24 manufactured something, they purchased something,
25 they used something?

1 MR. McCOY: It could be any one of those.

2 MR. TERSCHAN: Okay. "Did you have a
3 line of" is intended to be defined has he ever seen
4 or used it?

5 MR. McCOY: Right.

6 BY MR. McCOY:

7 Q Did the company -- Yeah, did the company do any
8 work involving blanket insulation?

9 A We used fiberglass insulation on ductwork.

10 Q What about asbestos blanket insulation?

11 A We didn't use that.

12 Q All right. Let's go back. Prior to 1950, what
13 positions did you have before you began working
14 with L & S Insulation?

15 A School, army, some miscellaneous jobs.

16 Q What level did you complete in the schools?

17 A Semester or two of college.

18 Q What was your position in the Service?

19 A Before I was busted, I was a PFC.

20 Q What type of work were you doing?

21 A Air Force, air cadet.

22 Q What specifically did they have you assigned to,
23 any types of duties?

24 A Well, we were stationed in Texas; and we just did
25 general things on the base. The war broke. There

1 were 50,000 of us. They didn't know what to do.
2 They asked us if we would like to leave, and I
3 left.

4 MR. CANNON: You didn't find that
5 employment to your liking?

6 THE WITNESS: Not for 20 years.

7 BY MR. McCOY:

8 Q So you resigned from the Service?

9 A I was offered an honorable discharge, which I
10 accepted.

11 Q What other positions did you have prior to working
12 for L & S?

13 A I worked in the breweries, Pabst and Schlitz.

14 Q What work did you do in the breweries?

15 A Loading, beer lines, miscellaneous things.

16 Q What other positions did you have before working
17 for L & S?

18 A None.

19 Q How did you get the position with L & S?

20 A I applied to the Unemployment Bureau. They were
21 looking for an estimator. I applied, and they
22 accepted me under the G.I. Bill.

23 Q And who hired you at L & S Insulation?

24 A Mr. Hanson.

25 Q What was Mr. Hanson's position?

1 A He was the president, chief operating officer, if
2 you want to say. He ran L & S Insulation.

3 Q And who was your first boss at L & S Insulation,
4 your immediate boss?

5 A Mr. Howard Redlich.

6 Q Redling, R-E-D-L-I-N-G?

7 A R-E-D-L-I-C-H, Redlich.

8 Q What was Mr. Redlich's position?

9 A He handled the roofing division.

10 Q What type of work did the roofing division do?

11 A Build up roofs, shingled roofs, corrugated
12 asbestos.

13 Q You say "corrugated asbestos," does that include
14 the siding?

15 A Siding, roofing -- not for homes -- commercial
16 buildings, industrial buildings.

17 Q What types of manufacturers' product lines did the
18 roofing division use in the asbestos types?

19 A Keasby in Madison, K-E-A-S-B-Y.

20 Q What other types of manufacturers' products were
21 used by the roofing division?

22 A Phillip-Carey for woolfelt.

23 Q What other types of asbestos products did the
24 roofing division use?

25 A Those woolfelt aren't asbestos. The only asbestos

1 product was the corrugated asbestos.

2 Q Was that all Keasby from Madison?

3 A Yes.

4 Q How about the tars and those types of products used
5 in the roofing?

6 A I'm sorry?

7 Q How about the tars and similar types of products,
8 the liquid types?

9 A Pitch and asphalt, but I can't give you the
10 manufacturers.

11 Q ~~Who~~ the did the purchasing work for L & S
12 Insulation when you first started?

13 A Harry Switala.

14 Q Can you spell his last name?

15 A S-W-I-T-A-L-A.

16 Q And is Mr. Switala still alive?

17 A Yes, he is.

18 Q Did he do purchasing for the whole company or just
19 the roofing division?

20 A The whole company.

21 Q And how long did Mr. Switala continue in the
22 purchasing division or purchasing area?

23 A Through his departure when he was president,
24 sometime in the late '70s or early '80s.

25 Q So he ultimately rose to become president of the

1 company?

2 A Yes.

3 Q He was president during the time period when you
4 were the owner; is that right, the sole owner?

5 A No.

6 Q Maybe I'm confused.

7 A The succession was Mr. Hanson, Mr. Switala and then
8 myself.

9 Q So you took over as president from Mr. Switala?

10 A Yes.

11 Q Where does Mr. Switala live now?

12 A I think he lives with his daughter somewhere on the
13 south side of Milwaukee. I don't know the address.

14 Q Have you finished paying -- Or did you acquire any
15 stock from Mr. Switala?

16 A Yes.

17 Q And have you finished paying him for all the stock
18 that you purchased from him?

19 A Yes.

20 Q Approximately, when did you take over for Mr.
21 Switala as the president of the company?

22 A I think it was the late '70s.

23 Q So did Mr. Switala retire at the time that you took
24 over as president?

25 A Yes.

1 Q Besides the roofing and the insulation division,
2 what other types of operations did L & S Insulation
3 have?

4 A None.

5 Q Have you given depositions in other cases
6 concerning asbestos?

7 A I'm sorry?

8 Q Have you given a deposition in other cases
9 concerning asbestos --

10 A I have given --

11 Q -- products?

12 A I have given one deposition in reference to --
13 primarily Cliff Newbauer.

14 Q Cliff Newbauer?

15 A Newbauer.

16 Q How do you spell that?

17 A N-E-W-B-A-U-E-R.

18 Q That was given here in Milwaukee?

19 A Yes.

20 Q And do you or your attorney have a copy of that
21 deposition?

22 A Yes.

23 Q Did that deposition concern the asbestos products
24 that were sold or installed by L & S Insulation?

25 A Installed, yes. Sold, no.

1 Q When L & S Insulation did work, was this usually by
2 a contract?

3 A Yes.

4 Q Usually it was a contract in writing; is that
5 right?

6 A That's correct.

7 Q Was there a certain person who was responsible for
8 keeping the records of the contracts?

9 A Generally our office girl brought together all the
10 records in a job file.

11 Q And these job files then were kept at L & S
12 Insulation?

13 A Yes.

14 Q What has the policy or practice been concerning
15 keeping these job files; and if it's changed over
16 time, tell me that?

17 A Well, I think we now keep seven years of files.

18 Q That's today?

19 A That's today.

20 Q How about back in, let's say, **1970**?

21 A Previously they kept job files for a longer period
22 of time, and I don't know when that occurred. I
23 don't know when the changeover occurred.

24 Q Did the changeover, as far as the policy of keeping
25 the job files, occur before or after you became

1 president of the company?

2 A Would you say that again?

3 Q Did the change, as far as the policy of how long
4 the job files were kept, occur before or after you
5 became president of the company?

6 A I think it was before.

7 Q What records are kept that show the -- or let me
8 rephrase that question. What records were made
9 that would show the products that were used at a
10 particular job?

11 A Today?

12 Q I'm talking about back in the 1950s.

13 A Well, the job tickets for material would indicate
14 the type of material that went out and the sizes
15 and not necessarily the brand names, but more
16 generic; fiberglass, calsil, no manufacturers.

17 Q What other records were kept that would show the
18 products or materials that were used for the jobs?

19 A Those records, the work tickets and the time
20 tickets comprised -- together with the estimate --
21 comprised the file.

22 Q You say "work tickets," "time tickets." What's the
23 difference between a work ticket and a time ticket?

24 A Time was the men on the job, the hours that they
25 worked. The work tickets were the products.

1 Q What was the name of the individual who was the
2 office manager that kept the job files back in the
3 '50s?

4 A Harry Switala and Peggy Booth.

5 Q Would you spell Peggy's last name?

6 A B-O-O-T-H.

7 Q And how long did Peggy continue in that position?

8 A I think she worked for L & S for 30 years.

9 Q Where does she live today?

10 A Palm Springs, California.

11 Q So she continued as the person in charge of those
12 job files even after you became president; is that
13 right?

14 A For the period that she was there, yes.

15 Q Approximately when did she retire?

16 A Fifteen, eighteen, perhaps twenty years ago.

17 Q How do you know that she lives in Palm Springs,
18 California now?

19 A Christmas cards.

20 Q Who kept job files after Peggy retired?

21 A She was succeeded by Bonnie Torretta.

22 Q Would you spell her last name for us?

23 A T-O-R-R-E-T-T-A.

24 Q Does Bonnie still have this position?

25 A Yes.

1 Q So she's still on the L & S payroll?

2 A Yes.

3 Q Is there anybody else that had responsibility for
4 keeping the job files?

5 A No.

6 Q What about yourself? Have you had some
7 responsibilities with regard to the job files?

8 A I had a responsibility to record whatever was sent
9 out to the jobs, but then it was put together by
10 the office girl.

11 Q What about Mr. Hanson when he was president?

12 A No.

13 Q Is Mr. Hanson still alive?

14 A No.

15 Q Approximately when did Mr. Switala succeed Mr.
16 Hanson as president?

17 A Middle '60s.

18 Q Who is the accountant for L & S?

19 A Harry Switala.

20 Q Today he's the accountant?

21 A No, I thought you said who was.

22 Q I was asking about today. I will get back to the
23 past, of course.

24 A Today we have the -- We have an accounting firm.

25 Q What's the name of the accounting firm?

1 A Just a moment.

2 Q Got more than one name on it?

3 A Yes. Radke & Schlesner.

4 Q R-A-D-K-E?

5 A T-K-E.

6 Q And who is the other?

7 A Allen Schlesner. He primarily does our work.

8 Q How long has Mr. Schlesner been the primary
9 accountant?

10 A Eight, ten years.

11 Q Prior to Mr. Schlesner being the main accountant,
12 who was in that role?

13 A The law firm of Niebler and Niebler.

14 Q They also did the accounting work?

15 A They did our tax work.

16 Q Niebler?

17 A Niebler and Niebler.

18 Q N-I-E-B-L-E-R?

19 A Yes.

20 Q And prior to Niebler and Niebler, who was in that
21 role?

22 A I wouldn't know.

23 Q Now, did Niebler and Niebler do the bookkeeping
24 work?

25 A No, that was Mr. Switala.

1 Q Did Mr. Switala have anybody helping him on the
2 bookkeeping work?

3 A Not to my knowledge.

4 Q What about in issuing checks? Who handled that
5 responsibility?

6 A Mr. Switala and Peggy Booth.

7 Q And before Mr. Switala was involved, who was
8 cutting the checks at the company?

9 A I don't have the faintest idea. I wouldn't know.

10 Q What responsibilities did you have as far as check
11 writing goes?

12 A None.

13 Q How about signing?

14 A Today?

15 Q Talking about -- Well, today, I'm more interested
16 in the period, say, before 1980.

17 A Until I took over, I didn't sign checks.

18 Q How about authorizing or approving payments, what
19 responsibility did you have before 1980?

20 A Well, we all had that responsibility. Whoever
21 handled the job had to approve payment of invoices
22 for that particular job.

23 Q Now, I believe you said that of the asbestos
24 products that L & S handled, that those were all
25 purchased from some outside source; is that right?

1 A That's correct.

2 Q L & S did not manufacture any asbestos products; is
3 that right?

4 A That's correct.

5 Q And L & S never put its name on any of the
6 packaging of the asbestos products; is that right?

7 A That's correct.

8 Q So the person handling a job which involved
9 asbestos products had to approve and authorize the
10 payment to the suppliers; is that right?

11 A Yes.

12 Q So from time to time, then, you would have the
13 responsibility to approve and authorize the payment
14 to asbestos suppliers for certain jobs; is that
15 right?

16 A No. We purchased our material primarily through
17 Building Services Industrial Sales, and for a small
18 degree it was of asbestos that we purchased this --
19 it was through them; and we -- whoever handled the
20 job approved their invoices.

21 Q So the invoices for the asbestos products came
22 through Building Services?

23 A For that which we purchased, yes.

24 Q All right. On the invoice from Building Services,
25 did it specify the manufacturer of the products?

1 A Not necessarily.

2 Q Sometimes it did, and sometimes it didn't; is that
3 what you're saying?

4 A Yes.

5 Q What about the contracts? Did they specify the
6 type of insulation that was needed sometimes?

7 A The specifications dictated the requirements.

8 Q Did they specify manufacturers sometimes for the
9 asbestos products?

10 A For all products they might generally reference
11 Owens-Corning, Johns-Manville, Knauf -- fiberglass
12 manufacturer.

13 Q You said these were primarily all commercial jobs
14 that were done by L & S?

15 A Commercial, industrial.

16 Q What about any boilers? Did you do some boiler
17 insulating work?

18 A Only as it related to the contract that we had,
19 which would have been a small part of an overall
20 job.

21 Q So the boiler work that L & S did was not a big
22 part of its business?

23 A Not at all.

24 Q It was a small part of the business?

25 A Very small.

1 Q What was the main type of business as far as the
2 use of the asbestos products?

3 A In a typical building school, hospital, whatever,
4 generally most of the piping in the building,
5 plumbing, heating was fiberglass. Ventilating
6 systems were fiberglass. If there was some
7 asbestos specified, it was usually on
8 high-temperature equipment, which was in the boiler
9 room -- most likely a breaching of hot gas off the
10 boiler and that was the extent of how much asbestos
11 might be involved in a typical school, hospital,
12 factory.

13 Q What about the aircell product?

14 A Which product?

15 Q Aircell product?

16 A Aerosol?

17 Q Aircell. Is that what you --

18 A Oh, aircell.

19 Q Yes.

20 A That if that was specified in a spec, and it
21 required aircell woolfelt, that was what would be
22 purchased.

23 Q Did you use any of the spray-on insulations?

24 A No. Can I ask a question of my attorney?

25 Q Sure, go right ahead.

1 (Discussion off the record.)

2 THE WITNESS: All right. I'm ready.

3 BY MR. McCOY:

4 Q Where are the business records from the past of L &
5 S kept?

6 MR. TERSCHAN: "Past" what?

7 BY MR. McCOY:

8 Q Past business records of L & S.

9 A Past seven years?

10 Q The --

11 A The past seven years are at the office.

12 Q How about records prior to that?

13 MR. CANNON: Object; asked and answered.

14 THE WITNESS: I'm sorry, I didn't hear
15 what he said.

16 MR. TERSCHAN: He just objected.

17 THE WITNESS: They're disposed of.

18 BY MR. McCOY

19 Q What about requirements concerning compliance with
20 laws relating to maintenance of the records for the
21 asbestos? Who's been responsible for that?

22 A Say that again, please.

23 Q I asked, who's been responsible at L & S for laws
24 relating to maintenance of records regarding the
25 asbestos products?

1 A Presently?

2 Q Yes.

3 A I'm not aware of those laws that state what we're
4 supposed to keep -- what we keep. There aren't any
5 asbestos products since 1970 or '71.

6 Q All right. So all the asbestos products were back
7 when Mr. Switala owned the business?

8 A Yes.

9 Q When you took over the business from him, did you
10 discuss with him the records relating to the
11 purchases of asbestos products?

12 A No.

13 Q Did you discuss with him where the records of the
14 business were?

15 A No.

16 Q Did you have a written agreement to purchase his
17 stock?

18 A Yes, drawn up by an attorney.

19 Q Now, you said the asbestos products were
20 discontinued, I believe you said, about 1971?

21 A Yes.

22 Q Why were they discontinued in 1971?

23 A I don't have the faintest idea.

24 MR. CONTA: Can you read his answer for
25 me? I didn't hear.

1 MR. TERSCHAN: He didn't have the
2 faintest idea.

3 BY MR. MCCOY:

4 Q Have you learned information about health hazards
5 of asbestos?

6 A Have I learned about information?

7 Q Yes.

8 A I was aware of Dr. Seillikoff's work in the field.

9 Q When did you become aware of Dr. Seillikoff's work?

10 A In the '70s.

11 Q How did you learn about Dr. Seillikoff's work?

12 A Some newspaper articles that were passed on to us.

13 Q So you got those as part of your work at L & S
14 newspaper articles?

15 A Not as part of my work. They were just -- They
16 were printed. Some were cut out by someone and
17 sent to us, some I might have cut out myself, just
18 general interest.

19 Q What other information about asbestos health
20 hazards did you have other than from the
21 newspapers?

22 A A general knowledge that some former members of
23 families had died of asbestos or asbestosis.

24 Q Are you familiar with -- Let me strike that
25 question for a moment. These are persons that you

1 knew?

2 A Workers.

3 Q Workers that you knew?

4 A Yes.

5 Q Insulators who you knew had died from asbestos; is
6 that what you're talking about?

7 A Members of their families that had died from
8 asbestos.

9 Q Are you familiar with OSHA?

10 A Yes.

11 Q Who's responsible for any OSHA compliance matters
12 at L & S Insulation?

13 A That falls in the hands of Bonnie Torretta.

14 Q Can you spell her last name? I think you already
15 did. I'm sorry.

16 A I gave you that already.

17 Q When did she get that responsibility?

18 A When she started.

19 Q When did she start?

20 A I think I indicated the time frame previously. She
21 took over from Peggy Booth. Peggy kept records
22 prior to that. Bonnie kept them until today.

23 Q So when Bonnie started, part of her
24 responsibilities included the OSHA compliance?

25 A Whatever was required would have been passed on to

1 her, yes.

2 Q And who took care of OSHA compliance before Bonnie?

3 A I'm sorry?

4 Q Who took care of OSHA compliance before Bonnie?

5 A Peggy Booth, if OSHA was there at that time.

6 Q Since 1970, I believe.

7 A Well, then --

8 Q What role had you had in any OSHA compliance
9 activities? Talking about you personally.

10 A None, other than if an OSHA -- if OSHA inspected
11 the job and required anything, it was my job -- it
12 was my responsibility to take care of it.

13 Q Have you had any asbestos investigations?

14 A No.

15 Q How about asbestos abatement activities? Who's
16 responsible for that?

17 A We never got involved in asbestos abatement.

18 Q Who handles the asbestos abatement activities, a
19 subcontractor, or who handles that?

20 A I never subcontract it.

21 Q What happens when you come across a job and there's
22 some asbestos to be removed? How is that --

23 A Today and then, owners handled that on their own;
24 and when we moved in, we had a clean area to work.

25 Q When did the asbestos abatement activities begin,

1 to the best of your recollection, in the insulating
2 field?

3 A In the '70s.

4 Q And since they began, L & S Insulation has never
5 been involved in that part of the business; is that
6 right?

7 A That's correct.

8 Q How many persons worked for L & S Insulation back
9 in 1950 when you began?

10 A Six or seven roofers, four -- three, four, five
11 pipe coverers.

12 Q Was it a union shop?

13 A Yes.

14 Q Has it always been a union shop?

15 A Yes.

16 Q How about helpers? Were there some helpers
17 employed?

18 A Only to the degree that the union contract would
19 allow.

20 Q What happened to the number of persons who were
21 doing the roofing and pipe covering work during the
22 time that you were at the company, did this
23 increase or go up and down or what was the major --

24 A Fluctuated to a high point of 70 percent.

25 Q It was as many as 70 percent doing the roofing and

1 pipe covering work at one time?

2 A Roofing was liquidated in the early '60s, so
3 insulation in the '70s went up to 50 men, let's
4 say, or 60 depending on the jobs.

5 Q Did you say it was in the early '60s that the
6 roofing was liquidated?

7 A Yes.

8 Q So for some period of time, there were as many as
9 you said about 60, maybe 70 persons doing
10 insulating work?

11 A In the '70s, yes.

12 Q What union did these people come from primarily?

13 A Local 19.

14 Q And do you know the business manager over at Local
15 19?

16 A Today his name is Randy Gottsacker.

17 Q I'm sorry?

18 A Randy Gottsacker, two Ts, S-A-C-K-E-R.

19 Q Are you familiar with some persons from that union
20 or their families who have had -- or you believe
21 that have had asbestos-related injuries?

22 A Would you repeat that?

23 Q I said, do you know of any persons or families of
24 persons from the asbestos workers Local 19 that
25 have had asbestos problems?

1 A I know of workers. I don't know of any family
2 members that have it.

3 Q And have you been called upon to provide any
4 information in connection with any of those
5 persons, cases about asbestos products?

6 A I'm sure we have.

7 Q And how has that process been handled in the past?

8 A If we had the information, we passed it on; we
9 provided it.

10 Q The nature of these requests, were they whether
11 there was -- what was the product that was at a
12 particular site? Is that a typical request?

13 A Not necessarily.

14 Q What types of requests did you have?

15 A I don't really recall. The workers just generally
16 filed for asbestosis when they retire.

17 Q Who provides the information in connection with
18 some of those other claims?

19 A I'm sorry?

20 Q I'm asking you, who provides the information about
21 the asbestos products when someone has a claim?

22 A In our company?

23 Q Yes.

24 A Whoever is capable of answering a question, we
25 would answer it truthfully and honestly.

1 Q What about pipe fitters? Are you familiar with the
2 head of the pipe fitters union?

3 A No.

4 Q Are all your persons from the asbestos workers
5 Local 19?

6 A Yes.

7 Q What about during the '50s and '60s? What unions
8 did the persons come from who were doing the
9 pipe -- who were doing the roofing and the
10 insulating work?

11 A Well, the roofers belonged to the roofers union. I
12 can't tell you which one that was. The other local
13 is the same.

14 Q So the relationship with Local 19 as a source of
15 employees has been longstanding; is that right?

16 A To perform at a time.

17 Q Let's see, I believe you said that Randy Gottsacker
18 is the head of the union today, the business
19 manager?

20 A I think that's correct, although they recently had
21 some changes. He might now be general manager with
22 someone else as the business manager.

23 Q Do you personally deal with Randy?

24 A Oh, occasionally.

25 Q Prior to Randy, who was the person that would be a

1 contact between L & S and Local 19?

2 A I think there was a Mr. Globig.

3 Q Can you spell his name?

4 A G-L-O-B-I-G.

5 Q And prior to Mr. Globig, who was the contact from
6 Local 19 with L & S?

7 A One of the business agents was Mr. Hemminger.

8 Q Would you spell that?

9 A H-E-M-M-I-N-G-E-R.

10 Q And what other persons have been in that role as
11 the contact from Local 19?

12 A There was a longstanding business agent from the
13 early -- from the '30s, as far as I know, until way
14 into the '50s and '60s; and it was Mr. Henry Hug,
15 H-U-G.

16 Q Any other contact names that you can remember from
17 Local 19?

18 A Former president that I knew, Gene Gottsacker.

19 Q This is this the father of Randy?

20 A Yes.

21 Q Any other contacts from Local 19?

22 A Members.

23 Q What are some of the members of Local 19 that you
24 regard as a friend?

25 A All the people that are working for us.

1 Q Had your company had claims filed, worker's
2 compensation claims for asbestos-related injuries?

3 A Yes.

4 Q Approximately how many of these claims can you
5 remember?

6 A Three, four, five. I'm not sure, just former
7 employees.

8 Q What is the name of the law firm that represents
9 your company for the worker's compensation claims?

10 A I can't tell you who that is.

11 Q You do use an attorney for those claims? Your
12 company uses an attorney for those claims; is that
13 right?

14 A No, I'm not involved in those.

15 Q Who handles the worker's comp claims from L & S?

16 A In our office, if there's any, whatever information
17 is there you get from Bonnie.

18 Q All right. Now, I believe you said you knew Gene
19 Kusch. That's when we got started with --

20 A Yes.

21 Q -- questioning here. You said you met him at some
22 annual meetings in Door County?

23 A Yes.

24 Q What types of meetings were these?

25 A They were mechanical contractors summer outings;

1 inviting related people, subcontractors, suppliers
2 to Door County for a little get together.

3 Q When was the last time that you recall meeting Mr.
4 Kusch at one of these outings?

5 A I wouldn't be able to tell you when that is.

6 Q Talking about more than 10 or **15** years ago?

7 A I wouldn't have the faintest idea. I remember
8 seeing him there as a contractor, and I can't tell
9 you when I did see him there.

10 Q Was this back when he had his **own** business?

11 A I understood him to be a contractor, yes.

12 Q When was the first time you learned anything about
13 the claim for asbestos injuries by Mr. Kusch?

14 A Whenever those documents were first presented to
15 us. I don't know those dates.

16 Q So this is sometime in the last year or
17 approximately?

18 A Whatever that is.

19 Q You're talking about the lawsuit documents; is that
20 right?

21 A Yes.

22 Q Do most of the trade employees for L & S come from
23 Local 19 still?

24 A Yes.

25 Q Approximately how many would you say you had right

1 now as trade employees?

2 A Approximately 30.

3 Q Has L & S been a member of any trade associations,
4 I'm talking about prior to 1980?

5 A Well, we have always been a member of the Wisconsin
6 Insulation Contractors Association.

7 Q Where does it -- Where did it have its office, or I
8 will just ask, today, where does it have its
9 offices?

10 A There are no offices per se, but the manager
11 operates out of his home.

12 Q And who is the person that runs the Wisconsin
13 Insulation Contractors --

14 A Well --

15 Q -- Association?

16 A -- we run it with about three contractors that are
17 members.

18 Q Who are the three contractors that are members?

19 A Sprinkmann and Sons, McDermott Insulation out of
20 Rockford, and ourselves.

21 Q Were there any members in addition to these three
22 at any point during the -- talking about going back
23 to the '50s?

24 A The high point was probably 11.

25 Q Did the group hold meetings from time to time?

1 A Yes.

2 Q There was a secretary?

3 A Only whoever was our executive secretary at a given
4 time.

5 Q Has this group of insulation contractors, the
6 association, been around since 1950 or even before?

7 A I would think so.

8 Q Were there discussions about the OSHA issues
9 relating to asbestos at the meetings of this
10 association?

11 A Not that I recall.

12 Q Were there any discussions about asbestos at this
13 association?

14 A No.

15 Q What information today does L & S make available to
16 any of the persons involved with these jobs about
17 asbestos hazards?

18 A What information do we make available to the people
19 about asbestos hazards?

20 Q Yes.

21 A It doesn't exist, and we don't do removal work. We
22 don't -- We don't allow our people to go into areas
23 and do retrofit work.

24 Q What do you mean by "retrofit work"?

25 A Removing existing insulation or equipment.

1 Q When did the ban against doing that type of work
2 begin at L & S Insulation?

3 A When they stopped manufacturing asbestos, we stayed
4 out of that field and intended to stay out of it.

5 Q I need to know the approximate time period.

6 A It's '70, '71.

7 Q All right. What information was provided to
8 persons back in '70 or '71 about stopping any type
9 of retrofit work?

10 A Retrofit?

11 Q Right, sorry.

12 A There was no information. It was just not our
13 field of work, and we didn't bid on it, so we
14 weren't involved in it. We wouldn't allow our
15 men -- We wouldn't bid on that type work, so they
16 were never involved.

17 Q So who gave this directive in the company?

18 A We all agreed that we didn't want to get into the
19 field.

20 Q And when you say "we all agreed," are you referring
21 to the persons that were owners back then?

22 A Owners, operators, estimators. Approximately five
23 people.

24 Q This would have included yourself and Mr. Switala;
25 is that right?

1 A Yes.

2 Q Who else was involved at that time?

3 A Frank Lovek.

4 Q How do you spell his name?

5 A L-O-V-E-K.

6 Q And who else was involved?

7 A Mark Borchardt.

8 Q Mark Borchardt?

9 A Yes.

10 Q Is that your son?

11 A Yes.

12 Q Who else was involved?

13 A That's about it.

14 Q Did you say there's no one else involved besides
15 you, Mr. Switala, Mr. Lovek and your son Mark; is
16 that right?

17 A In that time frame?

18 Q Yes.

19 A Those were the only people in the office, other
20 than the girls.

21 Q How about the estimators?

22 A They are all estimators.

23 Q What was the geographical territory for the
24 insulation work back in the '50s and the '60s and
25 early '70s?

1 A Southern part of Wisconsin indicated by
2 international lines -- union lines drawn up. It
3 zigzagged across the state from Waupun to La Crosse
4 up. That was our territory, from there down to the
5 state line and five counties around Rockford.

6 Q What did you say was the northern boundary?

7 A It varied by counties through Waupun going up and
8 down, a line heading for La Crosse. That exists to
9 this day.

10 Q The same territory still?

11 A Yes.

12 Q And how was that territory determined?

13 A By the unions.

14 Q Who were your competitors within that territory
15 back in the '50s and '60s and early '70s for the
16 insulation work?

17 A You want all the companies?

18 Q Yeah, as best you can recall.

19 A Oh, Universal Insulation, Armstrong, Sprinkmann,
20 Milwaukee Insulation, Boll, B-O-L-L, Industrial.
21 There might be more.

22 Q Have you named the major ones here?

23 A I think so.

24 Q Universal, Armstrong, Sprinkmann. Did you say
25 Milwaukee Industrial?

1 A Milwaukee Insulation.

2 Q And Boll?

3 A Boll Industrial.

4 Q Boll Industrial. Okay. Which of those companies
5 are in business today?

6 A Sprinkmann. Armstrong is in business nationally
7 but not in this area.

8 Q So the others have dropped out?

9 A Liquidated, retired, quit.

10 Q Did L & S ever acquire any of its competitors?

11 A No.

12 Q All right. What are the major sites at which L & S
13 did insulation work in the '50s and '60s and early
14 '70s?

15 A Oh, boy.

16 Q I know you can't name them all, but if you just --

17 A Generally schools, any newer plant companies -- In
18 the sense that we went after the new work; schools,
19 hospitals, churches, factories, whatever was being
20 built that had insulation in it in that time frame.

21 Q Breweries?

22 A No, we didn't work in breweries.

23 Q What about for the roofing type work that had the
24 asbestos in it? What were your main --

25 A Now, you're talking about small churches, small

1 factories. Never any large work,

2 Q Were there any government facilities other than
3 schools for which L & S did insulating work in the
4 '50s through the early '70s?

5 A We have always worked on the campus at Madison and
6 perhaps other scattered campuses involving the
7 University of Wisconsin.

8 Q How often did L & S change suppliers on the
9 asbestos products back in the time when those were
10 being used? Was that a frequent thing, or was it
11 the same supplier for many years?

12 A We purchased the material from Building Services
13 Industrial Sales. The requirements were, let's
14 say, 50 feet or 30 feet or 10 feet or something, I
15 would ask them to supply it. They might supply --
16 They will always supply me. When I ask for calsil
17 material, it can be from any number of
18 manufacturers. If they didn't have it, they buy it
19 from a competitor.

20 Q Is it correct to say or am I right in saying that
21 Building Services was the supplier for the asbestos
22 insulation products throughout the period of time
23 that those were used by S & L Insulation?

24 A No.

25 Q What other suppliers were there besides Building

1 Services?

2 A Allied came into the picture.

3 Q Is that an operation here in Milwaukee?

4 A Yes.

5 Q Allied, what is the name of the?

6 A Allied -- I think it's Allied Industrial
7 Insulation.

8 Q Okay. What other suppliers for the asbestos
9 insulation products did L & S use?

10 A Aircell and woolfelt were purchased from AAA out of
11 Chicago.

12 Q What other suppliers for the asbestos insulation
13 products were used?

14 A There aren't any others.

15 Q The purchasing of the asbestos products, that was
16 by accounts that were set up with these suppliers
17 that you've named?

18 A What is your question?

19 Q Did L & S have accounts with Building Services and
20 Allied Industrial and AAA?

21 A Yes.

22 Q Did statements come in on these accounts?

23 A Sure, they did.

24 Q Where are the account statements maintained today?

25 A There aren't any.

1 Q Are you saying that all of these records have been
2 destroyed? I mean, do you know they have all been
3 destroyed?

4 A To my knowledge, they have. They don't exist.

5 Q Did you have responsibility for any activities
6 involving destruction of the records?

7 A No.

8 Q So you're not aware actually of any job files that
9 have been destroyed; is that right?

10 A If there are any, they're in the hands of someone
11 that -- from a previous deposition that they were
12 given, and I can't even tell you if that exists.

13 Q Is this the prior deposition, the one asbestos case
14 that you talked about?

15 A Yes, Cliff Newbauer.

16 Q What files, to the best of your recollection, were
17 turned over in connection with Mr. Newbauer's case?

18 A Anything that was in our possession that showed
19 which jobs he had worked on.

20 Q Information about the jobs that he worked at, the
21 places?

22 A Yes.

23 Q What about information concerning the products that
24 were used on those jobs -- the job files?

25 A That would have been those files on a work ticket,

1 a material ticket.

2 Q When did you give the deposition in Mr. Newbauer's
3 case?

4 A 1980.

5 MS. GAVIN: I'm sorry, what did you say?

6 MR. TERSCHAN: 1980.

7 BY MR. McCOY:

8 Q And those files that were turned over from Mr.
9 Newbauer's case related just to the job sites, to
10 the best of your knowledge, Mr. Newbauer's job
11 sites; is that right?

12 A I think at that time there were two or three other
13 people involved; and to the degree that they were
14 involved, they were part-time occasional employees
15 of ours. Whatever was requested for them was also
16 supplied at that time.

17 Q Who were the other persons involved?

18 A Bill Globig was one.

19 MR. CONTA: What was that name?

20 THE WITNESS: Bill Globig.

21 MR. TERSCHAN: G-L-O-B-I-G.

22 BY MR. McCOY:

23 Q Who was the other part-time person?

24 A I think Frank Witkowski (phonetic).

25 Q Can you spell Frank's name? Do the best you can.

1 A Phonetically spell it.

2 Q Frank Witkowski?

3 A Polish-type sounding.

4 Q Who was involved in that case?

5 A Who was involved.

6 Q Yes.

7 A What do you mean? With respect to our files?

8 Q Yes.

9 A I don't really recall anymore. They were all
10 someone that might have worked for us for three
11 months or six months in some time frame. Frank --
12 Cliff was the only permanent worker.

13 Q **And** his last name, I think you said, was Newbauer?

14 A N-E-W-B-A-U-E-R.

15 Q How was the production or turn-over of the records
16 handled in Mr. Newbauer's case?

17 A They were brought into the deposition. I can't
18 tell you what happened after that.

19 Q Who was the attorney representing L & S Insulation
20 in that case?

21 A Chester Niebler.

22 Q Do your best to spell that last name, Chester's
23 last name.

24 A It's just like Niebler and Niebler, N-I-E-B-L-E-R.

25 Q So this was at the time that Mr. Niebler was also

1 doing the company's tax work; is that right?

2 A Yes.

3 Q And he was the one responsible for the production
4 or turning over of the records?

5 A No.

6 Q Who was responsible for that?

7 A We were asked to produce whatever information we
8 had relating to these people. We produced it,
9 brought it along with us; and it wasn't Chet's
10 responsibility. He was just there to see that
11 everything was orderly.

12 Q Okay. Maybe we'll just take that a little more
13 step by step. Who actually gathered the
14 information originally back at the L & S office for
15 Mr. Newbauer's case?

16 A Whoever. I suppose Bonnie pulled the files out.
17 1980, maybe it was Peg. Yeah, probably Peggy. She
18 dug through the records and found the job related
19 to these people and gathered them and put them
20 together in groups.

21 Q All right. And then after she had put together the
22 files, what happened next?

23 A We took them to the deposition.

24 Q Who took them to the deposition?

25 A Chet and I physically carried them in.

1 Q Mr. Niebler and yourself?

2 A Yes.

3 Q What happened to them at the deposition?

4 A I can't tell you. I don't know.

5 Q Have you seen those records since the deposition?

6 A No.

7 Q Have you ever had any discussions with Mr. Niebler
8 about what happened to the records?

9 A Mr. Niebler retired and passed away.

10 Q So do you have any knowledge of what happened to
11 the records after the deposition?

12 A No, I don't.

13 Q Did you ever call anyone or make any attempts to
14 get back the records?

15 A I had no reason to.

16 Q All right. And you say that since the time that
17 those records were pulled, though, there hasn't
18 been any actual records that have been destroyed,
19 to your knowledge; is that right?

20 A I can't tell you where any of that is.

21 Q You can't tell me where it's at; but my question is
22 simply, do you have knowledge that any of those
23 records have been destroyed?

24 A Whatever was in our possession that wasn't required
25 we have disposed of.

1 Q And how did the disposal of the records take place?

2 A I can't even tell you that. They were disposed of.

3 I don't know if they hired someone to do it or if

4 they were thrown into a dumpster.

5 Q Who gave the order to destroy the records?

6 A I can't tell you who did that either.

7 Q Why was it done?

8 A Not for any particular reason other than those --

9 We just don't keep records forever.

10 Q Are you saying that the job files that weren't
11 taken already -- or let me rephrase that question.

12 Are you saying the job files that were left in the
13 office after the production for Mr. Newbauer's
14 case, that those job files have been destroyed
15 other than the ones in the past seven years?

16 A I don't know that we had them back in the office;
17 but if they were back in the office, they aren't
18 there now, so they were together with other files
19 that were disposed of.

20 Q And you don't know who actually gave the
21 instructions or directives in connection with the
22 disposal of the records?

23 A No, I don't.

24 Q Does the company have any written policy concerning
25 maintenance of records?

1 A No written policy; only that which is required, and
2 I rely on Bonnie to do that properly.

3 Q Before Bonnie, that was Peggy that was doing that?

4 A That's correct.

5 Q Other than the times when you met Mr. Kusch at the
6 contractors meetings up in Door County, have you
7 had any contact with him, Gene Kusch?

8 A Not at all.

9 Q What products or contracts has L & S Insulation had
10 with Mr. Kusch's company?

11 A None. To my knowledge, none.

12 Q Does your company have a list of its customers?

13 A Phone list.

14 Q I believe we asked some questions, and you gave us
15 some answers about the source of the insulation
16 asbestos products. What about the roofing asbestos
17 products? What was the source for those suppliers?

18 A I don't know. There might have been some asbestos
19 felts. I can't tell you where they came from.

20 Q I think you said there's -- You said there's some
21 corrugated for the roofing?

22 A Well, that's Keasby in Madison.

23 MR. CONTA: What was the answer?

24 MR. TERSCHAN: Keasby in Madison. Same
25 time as the last time he was asked that.

1 MR. McCOY: We should probably take a
2 short break.

3 (Recess taken.)

4 (Exhibit No. 1 was marked.)

5 BY MR. McCOY:

6 Q Mr. Borchardt, your attorney has placed in front of
7 you a document that I gave him, which is marked as
8 Exhibit No. 1 for your deposition. Did you have
9 the opportunity to determine if there were any
10 records at L & S Insulation that are referred to in
11 that deposition notice?

12 A There are none.

13 Q Did you make a search through the company records
14 yourself to determine that or ask someone to do it
15 for you?

16 A I'm just aware that there aren't any.

17 Q And how are you aware that there are not any? You
18 have personal knowledge of that?

19 A Only by the fact that Bonnie retains seven years, I
20 believe.

21 Q Well, did you discuss with her what job files may
22 still be available at L & S Insulation that are
23 more than seven years old?

24 A There aren't any. They have been disposed of.
25 Whatever is older than that time frame has been

1 disposed of.

2 Q How do you know that for certain?

3 A I'm relying on her honesty in telling it to me.

4 Q So you're relying on her having done that, cleaned
5 out the files other than the ones that are over
6 seven years --

7 A Yes.

8 Q -- or within the last seven years?

9 A Yes.

10 Q Do you have any other basis apart from her having
11 that responsibility for knowing that there are no
12 files that are over seven years old?

13 A No. I thought I understood the question, did I
14 have any knowledge other than -- yeah, no, I don't
15 have.

16 Q You're relying on her?

17 A Yes.

18 Q Now, this -- I believe you said that Mr. Niebler
19 who was representing you back in the lawsuit, the
20 asbestos case back -- or representing your company
21 back in 1980, Mr. Niebler was with a company called
22 Niebler and Niebler?

23 A Yes.

24 Q And I believe you said Chester Niebler has passed
25 away?

1 A Yes.

2 Q What about the other Niebler?

3 A John Niebler is there now. Those were the Niebler
4 and Niebler.

5 Q So John Niebler still has the office?

6 A Yes, Niebler, Pyzyk, Wagner, et cetera.

7 Q Do you still have any -- I don't want to get into
8 the communications you have had with Mr. Niebler
9 because they were your attorneys, do you still have
10 any contact with John Niebler?

11 A He handles our real estate trust and our childrens'
12 trust.

13 Q Were there any other attorneys apart from Niebler
14 and Niebler that were involved in the 1980 case on
15 behalf of L & S?

16 A No.

17 Q I'm going to show you some pictures -- I'm not
18 going to mark them right now -- but I would like to
19 find out if you recognize any of these pictures as
20 products, asbestos products that L & S used back in
21 the '50s, '60s and '70s.

22 MR. CANNON: Excuse me, Counsel, I'm
23 going to insist that those be marked and made
24 exhibits in this deposition; any documents that you
25 show the witness.

1 MR. McCOY: I have no problem.

2 MR. CANNON: I would like those
3 circulated before they're shown.

4 MR. McCOY: That's fine.

5 BY MR. McCOY:

6 Q Mr. Borchardt, what recollection do you have about
7 the names of any of the manufacturers or the
8 product labels of the asbestos insulation products
9 that L & S used?

10 A Owens-Corning manufactured Kaylo.

11 MR. CONTA: Can you speak loudly, please?

12 THE WITNESS: Owens-Corning manufactured
13 Kaylo.

14 BY MR. McCOY:

15 Q Okay.

16 A Johns-Manville manufactured thermobestos
17 (phonetic). Those are the common ones. There
18 could be others.

19 Q Those products then were supplied for some of the L
20 & S work; is that right?

21 A For that little portion that we used, yes.

22 Q When you said Owens-Corning supplied Kaylo, what
23 was the Kaylo used for?

24 A No.

25 MR. TERSCHAN: He said, "Owens-Corning

1 manufactured Kaylo." That's what his testimony is.

2 MR. McCOY: He said it was used for L & S
3 work.

4 MR. TERSCHAN: That's correct. That is
5 not the same as your statement.

6 BY MR. McCOY:

7 Q The L & S work where the Kaylo was used, what type
8 of work was that?

9 A High temperature equipment, primarily breachings
10 off of boilers on the average job.

11 Q What's breaching?

12 A An exhaust -- hot gas exhaust off of a boiler.

13 Q Is that a pipe?

14 A Could be round or rectangular.

15 Q What's the form that the Kaylo came in? Was this
16 in the form of the lengths of pipe covering, or was
17 this in the block form?

18 A Both.

19 Q So both the pipe coverings and the blocks of Kaylo
20 were used on some of the L & S work; is that right?

21 A To the degree that it was specified and in whatever
22 ratio, yes, or thermobestos or whatever.

23 Q Can you recall the names of any of the other
24 manufacturers or product labels for the asbestos
25 insulation products that L & S used in its work?

1 A No, but I would be happy to answer any list that
2 might jog my memory.,

3 Q Was the Kaylo used before 1959?

4 A If required, yes.

5 Q And it was also used after 1959?

6 A Yes.

7 Q All right. We can circulate the pages. Have I
8 exhausted your memory on the actual product names
9 that you recall L & S using in the work --

10 A I think there was from Pabco, P-A-B-C-O.

11 Q What was the Pabco used for?

12 A Same type of calsil material.

13 Q Was it also used in the boiler breachings?

14 A That's primarily where it would have been used.

15 Q And was this also in the pipe covering, lengths and
16 in the block forms, both?

17 A If it were round or rectangular, yes. Seems to me
18 that there's an Atlas Asbestos out of Canada.

19 Q Atlas Asbestos from Canada?

20 A I think they manufactured it, also.

21 Q That was another company whose products were used
22 in the L & S work?

23 A Well, they were available. I can't tell you the
24 degree that we used any of those. I can't tell you
25 exactly how much Kaylo we used. Again,

1 Johns-Manville, again Atlas or Pabco.

2 Q But you did -- or L & S did use all four in
3 connection with its work; is that right?

4 A Periodically.

5 Q Have I now exhausted your memory on the asbestos
6 insulating products?

7 A I'd be happy to -- Give me a list. I will tell you
8 if I can remember any of them. That's to the best
9 of my knowledge.

10 Q Did you have anything further you wanted to say? I
11 just want to make sure I've exhausted your memory.

12 A No.

13 Q While everybody is looking at this, we have a
14 couple more questions.

15 (Exhibit No. 2, 3 and 4 were marked.)

16 (Recess taken.)

17 BY MR. MCCOY:

18 Q All right, Mr. Borchardt, we have had in front of
19 you what I believe is Exhibit 2 for your
20 deposition?

21 A Yes.

22 Q And there are some photos on that, and can you tell
23 us which ones that you have any recollection of?

24 MR. TERSCHAN: Any recollection of or --

25 BY MR. MCCOY:

1 Q Any recollection of those photos.

2 MR. CANNON: Objection to that question
3 as vague and unintelligible.

4 MS. GAVIN: Join, and also no foundation.

5 BY MR. McCOY:

6 Q You can go ahead and answer.

7 MR. TERSCHAN: Do you have any
8 recollection of ever hearing or seeing any of them
9 from when you were born to today.

10 THE WITNESS: You want them by numbers?

11 BY MR. McCOY:

12 Q Yes, you can tell us the numbers.

13 A Nine, ten and eleven are Kaylo. Certainly aware of
14 that. I have heard of Unibestos. That's number
15 11, Unibestos.

16 Q Does looking at those pictures bring back any more
17 memories about products that were used in the work
18 of L & S Insulation?

19 A Bring back memories of?

20 Q Bring back any other memories about products that
21 were used in the work of L & S Insulation?

22 A Not any more. I have always testified that the
23 calsil -- calcium silicate products that we used on
24 any of our jobs were so minimal, and they related
25 to high-temperature work in the boiler room, which

1 you could account for one percent of the jobs in
2 relation to all the other products; that, and we
3 did use Kaylo. Someone might have furnished us
4 Unibestos. I wouldn't even know.

5 Q So after looking at Exhibit 2, though, you don't
6 have any further recollection of any of the
7 asbestos products that were used in the business of
8 L & S; is that right?

9 A No, I don't recognize those others.

10 Q Did L & S purchase any Calsilite products?

11 A Not to my knowledge.

12 Q Now, in front of you now is Exhibit No. --

13 A Three.

14 Q Three. And that also has some photos there, and I
15 have the same question for you, which is, after
16 looking at Exhibit 3, do you recognize any of those
17 products that were used in the business of L & S
18 Insulation?

19 A None. I recognize Zonolite just by trade name.

20 Q But you don't have a recollection of that being
21 used in the business of L & S Insulation; is that
22 right?

23 A I'm not even aware that it contains asbestos.

24 Q So the answer is, you're not aware that it was used
25 in the business of L & S?

1 A No, it wasn't.

2 Q All right. And then Exhibit No. 4 is the other
3 page with some photos on it. In looking at those
4 photos, do you recognize any of those as products
5 used in the business of L & S Insulation?

6 A No.

7 Q All right. Who do you know that works for the
8 Sprinkmann Company?

9 A Today?

10 Q Sprinkmann and Sons.

11 A Today?

12 Q Today or in the past.

13 A Well, in the past I knew by name some of the
14 Sprinkmann family. No association with them.
15 Presently, I know Mr. Ralph Van Beck. He's in
16 charge of the insulation division of that company.
17 I know some of their estimators but only through
18 meeting them at one of the exchanges.

19 Q Which of the Sprinkmann family members did you
20 know?

21 A Bill Sprinkmann, and I think his father. When he
22 first started, his father was prominent in the
23 business.

24 Q What was his father's name?

25 A I don't know.

1 Q How often did this Wisconsin Insulation Contractors
2 Association have meetings?

3 A We were the negotiating team for the contractors
4 with the union, and we met in relation to that and
5 other union activities such as trade boards,
6 apprenticeship committees and then perhaps a
7 Christmas party.

8 Q So there would be several meetings during the
9 course of most years; is that right?

10 A Per year.

11 Q When did you start going to meetings at the
12 Insulation Contractors Association of Wisconsin?

13 A Late '70s.

14 Q And who attended meetings on behalf of L & S before
15 you?

16 A Harry Switala.

17 Q Was there ever a policy adopted by the Wisconsin
18 Insulation Contractors Association concerning
19 asbestos use?

20 A Not to my knowledge.

21 Q Was there ever anything adopted concerning health
22 and safety matters of asbestos?

23 A No, not to my knowledge.

24 Q Where are the records of this association kept at?

25 A At our executive secretary.

1 Q Who is currently the executive secretary?

2 A Mrs. Deborah Wanta.

3 Q Deborah, what is her last name?

4 A Wanta, W-A-N-T-A.

5 Q Deborah Wanta?

6 A Yes.

7 Q And which company is she associated with?

8 A That's her -- She works out of her home, but the
9 records that she has are financial. There are no
10 other records. We keep our own trade board records
11 or own apprenticeship records. That's all done by
12 the people that are elected to those positions.
13 That's not in her hands.

14 Q What about the minutes of meetings? Where are
15 those kept at?

16 A If there are any and she was present, they would be
17 in her possession.

18 Q How long has she been the **executive** secretary?

19 A Well, her husband was the executive secretary prior
20 to her; together, perhaps ten years.

21 Q And who played that role before them or who had
22 that role before them?

23 A A variety of people. I can't recall all their
24 names. They move on.

25 Q Are there any records available at L & S Insulation

1 to identify which of the manufacturers' products
2 went to a particular job site for the asbestos?

3 A The records that we have go back seven years, and
4 the cut-off point was '71, so there wouldn't be
5 anything.

6 Q Can you recall -- Can you, yourself, recall on some
7 of the job sites which products were used, the
8 asbestos products, which manufacturers' products?

9 A Be impossible. I could go to a job site and tell
10 you which is calsil, which is fiberglass; but I
11 couldn't tell you if it was purchased before '71 or
12 after. That would be a microscopic test.

13 Q So is it true that you have no recollection of
14 which manufacturers' asbestos products were used on
15 any of the jobs that -- Let me rephrase that
16 question. Is it true that you have no recollection
17 of which manufacturers' asbestos products would be
18 at a specific job site of L & S?

19 A That's true.

20 Q Let me go back for one moment. You indicated that
21 the suppliers of the asbestos insulation products
22 included Building Services, Allied Insulation and
23 AAA from Chicago?

24 A Yes.

25 Q Can you remember other suppliers of the asbestos

1 insulation products for the L & S work?

2 A No.

3 Q Were there individual employees of L & S that were
4 designated as a foreman or had supervisory
5 responsibilities in connection with the insulation
6 work?

7 A Only to the degree that the contract would require
8 it. Our contract presently is that if there are
9 foremen on the job, one has to be designated as a
10 foreman. That might have been five men one time or
11 ten men.

12 Q What records are kept showing who were the
13 employees at a particular job site back when the
14 asbestos products were being used in the work of L
15 & S?

16 A What records are kept?

17 Q Yes.

18 A There aren't any.

19 Q Back in the time period when L & S was using the
20 asbestos insulation products, what safety
21 precautions were taken in connection with their
22 use?

23 A To the degree -- To the small degree that we used
24 asbestos products and together with all our other
25 products, the men were provided masks, varying

1 types of masks. They wore them if they felt like
2 it. If they were smokers, they probably didn't.

3 Q What types of masks were provided?

4 A Safety dust and fiber masks.

5 Q Paper?

6 A Was available at that time.

7 Q Paper or the cloth type?

8 A Some were the paper, yes.

9 Q Were most of them paper?

10 A No, some were -- There are more paper today only
11 because of dust and fibers.

12 Q What other types of masks were provided back in
13 that --

14 A They have evolved into charcoal filters, but we had
15 no requirements for those.

16 Q So when the asbestos products were being used by L
17 & S Insulation there was no requirement that masks
18 be worn; is that right?

19 A No, there was -- Masks were always furnished from
20 the time that I started with the company. They
21 were always available to whoever wanted to use them
22 and wherever they wanted to use them, whether there
23 was asbestos on the site or not. Ninety-five
24 percent of our worker's work was not asbestos, so a
25 man might ask for a dust mask just for dust.

1 Q Right, I understand. Well, all I'm trying to ask
2 you again, is it true that there was no requirement
3 that a mask be worn?

4 A Masks were available.

5 Q But there was no requirement that they be worn?

6 A We had no policy that said, you're going to get
7 fired if you don't wear a mask.

8 Q But again, my question is simply, was there any
9 requirement that they be worn?

10 A I guess the answer is no.

11 Q Was there any type of warning information provided
12 by L & S to workers using asbestos?

13 A No. We had no information given to us. We passed
14 no information along.

15 Q Back in the -- So is it also true to say that there
16 was no type of warning provided to persons who are
17 not working for L & S, but might be working near
18 the L & S employees about the asbestos?

19 A Please repeat that.

20 Q I'm sorry if that's a confusing question. Is it
21 also true that no warnings were provided to persons
22 who were working around the L & S employees about
23 asbestos hazards?

24 A We had no information to pass on to anyone.
25 Generally -- just volunteering here -- Generally

1 when we worked in the boiler room, there weren't
2 any other people. Everything had been completed.
3 Everyone was gone from the site. We were the only
4 ones there. We were the last trade on the
5 construction site when it came to insulation in
6 these areas. We were the clean-up people. We had
7 to do our work, clean up everything and leave.

8 Q I appreciate you're volunteering the information.
9 I will move to strike it. There's no pending
10 question, but let me go back to where I was at. My
11 question to you again is, did L & S provide any
12 kinds of warnings about asbestos to persons that
13 were working near its employees?

14 A We had nothing to give to anyone. We had -- No.

15 Q So is the answer no?

16 A I'm sorry, no.

17 Q Now, let me just ask you about a couple places.

18 MR. TERSCHAN: At the risk of unduly
19 speeding this up, Mr. Borchardt has looked at the
20 entire list of all the names of all the places that
21 you included in your interrogatories, which we will
22 be responding to in due course, so if there are
23 places on that list -- You might want to ask him
24 a general question about the list that you
25 provided.

1 BY MR. McCOY:

2 Q What recollections do you have about the -- I will
3 withdraw that question. Do you have any
4 recollection about L & S Insulation doing work at
5 Lancaster School?

6 A No.

7 Q All right. Do you have any recollection about L &
8 S Insulation doing work at Three Fountain Nursing
9 Home?

10 A No, I don't.

11 Q And do you have a recollection about L & S
12 Insulation doing work at Adelman Laundry?

13 A We did a little work for Adelman direct.

14 Q Adelman. When you say "**direct**," what do you mean
15 by that?

16 A They hired us to insulate some miscellaneous pieces
17 of pipe or whatever were required.

18 Q So you did not work through a general contractor.
19 You worked directly for Adelman on that job?

20 A Yes.

21 Q Approximately, when did you do work for Adelman?
22 I'm talking about L & S.

23 A Those were just miscellaneous types. I wouldn't
24 remember.

25 Q Miscellaneous?

1 A These were very small little repair jobs.

2 Q It was on more than one occasion, though; is that
3 right?

4 A Yes. Yes.

5 Q More than five times?

6 A I would think so.

7 Q And what was the nature of the work for Adelman?

8 A Insulating hot pipe to prevent their people from
9 getting burned.

10 Q Who is the person at Adelman that actually hired L
11 & S to do the work?

12 A I wouldn't have the faintest idea. I wasn't
13 involved in it. People that visited and controlled
14 that work are dead.

15 Q All right. And when did this work for Adelman
16 first begin? Did this begin back in the '50s?

17 A I would have no way of knowing.

18 Q It was done while you were the president or
19 while --

20 A Prior to.

21 Q So it was done when Harry Switala was president?

22 A Yes.

23 Q Do you have any recollect-on or knowledge about the
24 products that were used to insulate the hot pipe at
25 Adelman?

1 A No.

2 Q Do you know who the L & S persons were that did
3 that work?

4 A No.

5 Q In the course of your work at L & S, let's go back
6 to the 1950s, how often did you actually have to go
7 out and visit a job site?

8 A In the late '50s when I started working with the
9 insulation people, I chased around the state
10 measuring work, calling on customers or visited a
11 site along with other people. It would have been
12 Fred Hanson, Bernie Underwood (phonetic) and
13 myself, Harry Switala.

14 Q So you might visit a site, might even visit more
15 than one site in a day?

16 A Could have happened, yes.

17 Q Was there a warehouse operation at L & S
18 Insulation? I'm talking where you check in and out
19 the material for the jobs.

20 A We warehouse our own material, yes.

21 Q How big is this warehouse?

22 A 10,000 square feet.

23 Q Was it the same warehouse back in the '50s and
24 '60s?

25 A No, we were in a small residence on the south side.

1 I think it was 616 South 5th Street.

2 Q Were the products still warehoused, though, back in
3 the '50s and '60s?

4 A Did L & S warehouse it back in the '50s and '60s?
5 Only what we needed.

6 Q Were those products checked in and out of the
7 warehouse?

8 A Yes.

9 Q Now, was there a person who was the manager of the
10 warehouse?

11 A Not a manager, an employee in charge of the
12 warehouse.

13 Q Who was running the warehouse back in the '50s?

14 A '50s, Harry managed the warehouse, had a part-time
15 truck driver who has deceased.

16 Q What about in the '60s? Who was running the
17 warehouse?

18 A A Robert Zalinski (phonetic) who later changed his
19 name to Green, which I understand is the same one
20 who ran our warehouse.

21 Q In the '60s?

22 A '60s and '70s until he retired. It might have been
23 even into the '80s.

24 Q Right, and where did Mr. -- You say it's now Mr.
25 Green?

1 A I think he goes under the name of Robert Green.

2 Q Where is he living now?

3 A I don't know, but he's in the phonebook.

4 Q In the Milwaukee area?

5 A Yes.

6 Q Robert Green, G-R-E-E-N?

7 A Yes.

8 Q Does L & S have a retirement or a pension program?

9 A Only for direct office employees because everyone
10 else is covered under their program.

11 Q Cover under the union program?

12 A Under the union.

13 Q So like Mr. Green, he's a member of a union?

14 A He was a member of the laborers union.

15 Q Laborers union?

16 A Yeah.

17 Q Which laborers union, one here in Milwaukee?

18 A In Milwaukee.

19 Q Are you a member of any of the unions yourself?

20 A No.

21 Q Have you ever been?

22 A No.

23 Q Ever have any conversations with any of the
24 Sprinkmanns, talking about Bill Sprinkmann, his
25 father about any of the asbestos health hazards?

1 A No, very few conversations with any of them. No,
2 nothing.

3 Q Back in the '50s and '60s was McDermott Insulation
4 a competitor of L & S?

5 A In a sense, but not really because they worked
6 primarily in their five counties in Illinois; and
7 that was not a region that we wanted to bid in.
8 They very seldom bid in Wisconsin, and we very
9 seldom bid in Illinois.

10 Q Did you say that L & S never did any insulation
11 work for the breweries?

12 A To my knowledge, very little. We were never
13 invited to bid any of their work.

14 Q But at the Oak Creek Power Plant, what insulation
15 work did L & S do?

16 A We didn't do any work. I know we did some exterior
17 walls at Oak Creek, one and two.

18 Q What type of work was involved with the exterior?

19 A Corrugated asbestos walls.

20 Q And when was that work done?

21 A I would have to think in the early '50s.

22 Q Did you say units one and two?

23 A Units one and two.

24 Q Units one and two. When you say corrugated
25 asbestos walls, what was put on the walls? What

1 was the asbestos used for at work?

2 A Siding. Exterior siding.

3 Q Okay. Do you know who supplied that siding?

4 A Keasby in Madison.

5 Q How about Nordberg Foundry? What work did L & S
6 Insulation do there?

7 A Where?

8 Q Nordberg Foundry?

9 A None to my knowledge.

10 Q What about Milwaukee Vocational School?

11 A We might have done some periodic small jobs at the
12 vocational school.

13 Q What type of work was involved with those jobs?

14 A Pipe and duct insulation, mostly remodeling any
15 areas that they changed.

16 Q Approximately when was that work done for the
17 Milwaukee Vocational School?

18 A Over a time -- a long time frame. Small
19 quantities, different times.

20 Q Several different occasions again?

21 A Oh, probably a dozen.

22 Q This was usually then pipe and duct insulation?

23 A Yes.

24 Q You did the insulating work -- L & S did the
25 insulating work for that. Is that what would

1 happen, L & S did the insulation in connection
2 with, you know, with the pipe and ducts?

3 A Yes, mostly as a subcontractor.

4 Q All right. What about the Milwaukee -- any of the
5 Milwaukee County buildings? What work did L & S do
6 for those buildings?

7 A Milwaukee County, the County grounds?

8 Q Yeah, in the County.

9 A Early time frame. None recently much.

10 Q How about before **1980**?

11 A **1980**?

12 Q Let's make it even earlier. Let's say before **1972**.

13 A I can't think of any.

14 Q What about an apartment complex at 16th and
15 National? Did L & S do any work at that site?

16 A Doesn't -- Nothing.

17 Q Doesn't ring a bell?

18 A No.

19 Q What about Greenfield High School?

20 A I don't think we worked on that project.

21 Q How about the Wauwatosa Civic Center?

22 A We did some work there recently; but when it was
23 built, I don't believe we were involved.

24 Q I have only got a few more questions left. I don't
25 know if we're going to have questions from the

1 others here, or is there?

2 MS. SCHUETT: I might have one or two.

3 BY MR. McCOY:

4 Q I want to go back briefly. You indicated that
5 masks were always available. Do you recall talking
6 about that?

7 A Yes. I said I know that masks were available when
8 I started with the company.

9 Q Was there a specific purpose or design type of mask
10 that was chosen?

11 A No, whatever safety salesman might suggest to us is
12 what was purchased, and I didn't do any of that
13 purchasing.

14 Q So these masks were not purchased specifically for
15 asbestos, but just for any general type of dust;
16 would that be correct?

17 A That's correct.

18 Q Did I & S Insulation make those masks available to
19 anyone at the job sites other than some employees?

20 A No.

21 Q Were the masks made available at the job sites, or
22 were they just at the main office?

23 A They were in the possession of the individual
24 workers.

25 Q All right. I appreciate your time. I don't have

1 any further questions.

2 EXAMINATION

3 BY MS. SCHUETT:

4 Q I have a couple, sir. You testified that you have
5 no records indicating which supplier supplied any
6 particular asbestos-containing material at any of
7 your job sites; is that correct?

8 A That's correct.

9 Q Is it also true, sir, that you have no recollection
10 as to any particular job site as to any particular
11 supplier that supplied asbestos-containing
12 materials as to that job site?

13 A That's true. It would be impossible for me to know
14 that.

15 Q Thank you. That's all I have.

16 EXAMINATION

17 BY MR. CONTA:

18 Q I have two or three questions. Have you met or
19 talked with Mark Fischer?

20 A No.

21 Q Do you know who Mark Fischer is?

22 A No.

23 Q That's all I have.

24 MR. CANNON: I have nothing.

25 (Proceedings concluded at 12:20 p.m.)

1 STATE OF WISCONSIN)
2) SS:
3 MILWAUKEE COUNTY)
4

5 I, SHERYL L. STAWSKI, a Registered
6 Professional Reporter and Notary Public in and for the
7 State of Wisconsin, do hereby certify that the above
8 deposition of ELMER H. BORCHARDT was recorded by me on
9 the 16th day of July, 1996, and reduced to writing under
10 my personal direction.

11 I further certify that I am not a
12 relative or employee or attorney or counsel of any of
13 the parties, or a relative or employee of such attorney
14 or counsel, or financially interested directly or
15 indirectly in this action.

16 In witness whereof, I have hereunder set
17 my hand and affixed my seal of office, at Milwaukee,
18 Wisconsin this 19th day of July, 1996.
19
20
21

22 _____
23 Notary Public
24 In and for the State of Wisconsin
25

My Commission Expires: August 23, 1998.